

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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FILE: B-152554

DATE: FEB 24 1975

MATTER OF: Expenditures for foreign disaster relief
assistance in absence of appropriation**DIGEST:** Antideficiency Act provision which permits employment of personal services in excess of that authorized by law in case of emergency involving safety of human life or protection of property does not authorize expenditures for relief assistance in foreign disasters in excess of amount appropriated to contingency fund for disaster relief.

This decision to the Secretary of State is in response to a request of the General Counsel, Agency for International Development, for our decision regarding authorization for expenditures pursuant to section 451 of the Foreign Assistance Act of 1961 (FAA), as amended, 22 U.S.C. § 2261, when the applicable appropriation act has expired and a subsequent joint resolution continuing appropriations has not been enacted or has expired.

The General Counsel suggests that section 3679(b), Revised Statutes, as amended, 31 U.S.C. § 665(b), authorizes expenditures for disaster relief activities in less developed countries when the applicable appropriation act has expired and no continuing resolution is in effect. Sections 636(b) and 632(g) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. §§ 2396(b) and 2392(g) respectively, were also cited as possible authorities for disaster relief expenditures in the situation described.

Section 451(a) of the FAA provides for a disaster relief contingency fund:

"* * * There is authorized to be appropriated to the President for each of the fiscal years 1974 and 1975 not to exceed \$30,000,000, to provide assistance authorized by this part primarily for disaster relief purposes, in accordance with the provisions applicable to the furnishing of such assistance."

Section 101(b) of Pub. L. No. 93-324 (so-called Continuing Resolution) approved June 30, 1974, 88 Stat. 281, 282, provided obligational

authority for contingency fund purposes during the first quarter of fiscal year 1975 (July 1 through September 30, 1974). Pub. L. No. 93-448, approved October 17, 1974, 88 Stat. 1363, extended the prior continuing resolution, Pub. L. No. 93-324, until sine die adjournment of the Second Session of the Ninety-third Congress.

Section 3679(b), Revised Statutes, as amended, 31 U.S.C. § 665(b), authorizes obligations in excess of those otherwise legally allowable under circumstances prescribed therein:

"No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property."

A provision similar to the above was originally enacted as a part of the urgent deficiency Act of May 1, 1884, ch. 37, 23 Stat. 15, 17, and was primarily intended to foreclose claims by Government employees who had worked overtime. See 15 Cong. Rec. 3410-11 (1884) wherein Congressman Randall explained that the exception was intended to reach "occasions when the life-saving organization of Government might require the service of persons not regularly provided for by law." See also 15 Cong. Rec. 2143-4 (1884) (remarks by Senator Beck). The Life-Saving-Service was authorized at that time to compensate crews and volunteers of life-saving stations along the United States coastline to save lives and property in event of a shipwreck. See Act of June 18, 1884, ch. 265, 20 Stat. 163.

Although the language of the exception contained in 31 U.S.C. § 665(b) is rather broad, we find nothing in the legislative history to indicate an intent that it be used to carry out disaster relief activities in foreign countries. Further, insofar as property is concerned, we might point out that decisions of our Office and its predecessor (Comptroller of the Treasury) indicate that the exception in question pertains only to Government property or property for which the Government may be considered responsible. See for example 9 Comp. Dec. 182 (1902); 2 Comp. Gen. 799 (1923); 3 Comp. Gen. 979 (1924); B-149942, December 4, 1962; 53 Comp. Gen. 77 (1973). Moreover, to the best of our knowledge the authority of law cited has never been considered as authority to carry out disaster relief of the scope that appears contemplated either in the United States or abroad, where appropriations are otherwise lacking for such purpose. Our view in this matter finds some support in the fact that when the Congress intends that funds be available for emergency disaster relief in foreign countries it specifically authorizes and makes appropriations for such purpose. We would also point out that domestic disaster relief activities are

generally carried out under the authority of the Disaster Relief Act and with appropriations made to carry out the provisions of such Act. Considering the foregoing, as well as the long period of time the provision of law in question has been in effect and the manner in which it has been construed, it is our view that 31 U.S.C. § 665(b) does not authorize the expenditure of public funds in excess of appropriations for general disaster purposes either at home or abroad, but rather is limited--insofar as emergency disaster situations are concerned--to emergency situations such as vessels in distress, airplane crashes, other motor vehicle crashes, fires, and the like, i.e., emergency situations limited in scope and limited generally to disaster emergencies involving Government property or property for which the Government has some responsibility under the law to protect and, insofar as disasters in foreign countries are concerned, to those emergencies involving the safety of United States property, employees, or nationals. Also, it is clear from the text of the statute and the legislative history cited above, that the section authorizes deficiency spending only for personal services.

Accordingly, it is our view that 31 U.S.C. § 665(b) does not authorize obligations for disaster relief purposes under the circumstances considered herein.

Section 636(b) of the FAA of 1961, as amended, 22 U.S.C. § 2396(b), provides in pertinent part that:

"Funds made available for the purposes of this chapter may be used for * * * expenditures outside the United States for the procurement of supplies and services and for other administrative and operating purposes (other than compensation of personnel) without regard to such laws and regulations governing the obligation and expenditure of funds of the United States Government as may be necessary to accomplish the purposes of this chapter."

The General Counsel suggests that--

"This section might possibly be construed to authorize obligations of Contingency Funds for disaster relief purposes even in the absence of an Appropriation Act and Continuing Resolution. The principal issue presented is whether or not funds remain 'available' within the meaning of Section 636(b) in circumstances where a Continuing Resolution which made them available has not been extended.

"Even if Section 636(b) does not operate to make funds available without a separate viable appropriation, could it be construed to permit the obligation of funds for commodities which do not fall within the exception carved out in 31 U.S.C. §665(b)?"

The provisions of section 636(b) are similar to those contained in section 114(d) of the FAA of 1948, ch. 169, 62 Stat. 137, 149. An examination of the legislative history of that language discloses that its purpose was to provide flexibility in contracting by permitting the waiver of certain statutory provisions such as those relating to advance payments and advertising requirements. See pages 29 and 96 of H. Rep. No. 1585, 80th Cong., 2d Sess., and page 64 of Sen. Rep. No. 935, 80th Cong., 2d Sess.

In any event, the authority contained in section 636(b) is restricted to "funds made available for the purposes of this Act" and, in the absence of any indication in the legislative history of such section to suggest otherwise, cannot be construed as comprehending obligations in excess of or in the absence of, appropriations. While section 636(b) permits funds to be used without regard to laws and regulations pertaining to obligations and expenditures, funds to cover such obligations and expenditures must otherwise be available therefor. In other words, unless funds are otherwise available for the purchase of commodities, section 636(b) can have no effect.

Similarly, section 632(g) of the FAA of 1961, as amended, 22 U.S.C. § 2392(g) provides for fiscal flexibility within the limit of appropriated funds. That section provides in part as follows:

"Any appropriation or account available to carry out provisions of subchapter I of this chapter may initially be charged in any fiscal year, within the limit of available funds, to finance expenses for which funds are available in other appropriations or accounts under subchapter I of this chapter: Provided, That as of the end of such fiscal year such expenses shall be finally charged to applicable appropriations or accounts with proper credit to the appropriations or accounts initially utilized for financing purposes: * * *." (Emphasis added.)

Concerning such section, the General Counsel asks our decision whether "no year funds" such as those appropriated for famine and disaster relief to the Africa Sahel (section 639A, FAA of 1961, as amended),

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may initially be charged under the provisions of section 632(g) and section 636(b) of the FAA to finance expenses of disaster relief obligations in other less developed areas provided that the Contingency Fund is finally charged with the expenditure prior to the end of fiscal year and a proper credit made to the account initially charged in the event an appropriation for the Contingency Fund ultimately is obtained.

The initial charging of any particular appropriation or account for an item not otherwise properly chargeable thereto clearly is authorized only if another appropriation or account properly could have been charged therefor. Accordingly, in the absence of any appropriation for disaster relief purposes, such as a period between the lapsing and extension of a continuing resolution, section 632(g) cannot serve to permit "no year funds" to be obligated for disaster relief purposes.

The effect of section 636(b) has been considered earlier in this decision.

R.F.KELLER

{ Deputy } Comptroller General
of the United States